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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/977,062	10/12/2001	Paula Mary Sosalla	KCC 4777	1782

321 7590 12/29/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 12/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/977,062

Applicant(s)

SOSALLA ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

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DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims 1 – 16 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 22 are rejected under 35 U.S.C. 102(e) as being anticipated by Olson et al. (US 6,297,424)

The applied reference has a common applicant with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

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With respect to claim 1, Olson et al. (hereinafter "Olson") discloses a disposable absorbent article having an area which is visible when the article is worn, a color gradation in the area providing a coloration which varies in intensity over the area from a higher intensity of color to a lower intensity of color (one of fish 78), and a visible element (70) in the area at a location where the coloration is of lower intensity or absent such that the element remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claims 2 – 4, Olson discloses the visible element as a graphic, registration mark, and/or wetness indicator as set forth in col. 3, lines 29 – 32 and col. 4, lines 40 – 58.

With reference to claim 5, Olson discloses an article having an outer cover (110) and an absorbent material disposed inside the cover (44) said color gradation and wetness indicator disposed on the cover as set forth in col. 9, lines 49 – 52.

As to claim 6, Olson discloses the wetness indicator comprising and active graphic (one of fish 78) as set forth in figure 1.

With reference to claim 7, Olson discloses an absorbent article as a pant having a front region, back region, crotch region and wetness indicator on a portion of the crotch region which is substantially free of color as set forth in figure 4.

As to claims 8 and 9, Olson discloses a coloration change from higher intensity to lower intensity generally in the direction of the crotch region on one or more sides of the

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pant as set forth in col. 2, lines 4 – 15; col. 2, line 50 to col. 3, line 6; col. 13, lines 27 – 45 and figure 1.

Regarding claims 10 – 11, Olson discloses a color gradation involving only one color or a combination of different colors as set forth in col. 2, line 50 to col. 3, line 6 and col. 7, lines 39 – 43.

With respect to claim 12, Olson discloses an article further comprising a graphic and a registration mark on the article as set forth in col. 4, lines 46 – 49 and in figure 1. Olson discloses the use of licensed characters as suitable graphics, which are considered registration marks, along with other types of graphics.

The examiner notes that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

As to claim 13, Olson discloses an absorbent article as a pant having a crotch region wherein the registration mark is located on the crotch region (78) as set forth in figure 1.

With reference to claim 14, Olson discloses an article comprising a training pant having an outer cover with an interior surface and an opposite exterior surface, and an absorbent material disposed on the interior surface (figure 7a), said pant further having

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front, back and crotch regions, said visible element comprising an active graphic (one of fish 78) on the crotch region for indicated the wetness of the crotch region as set forth in figure 1.

Regarding claim 15, Olson discloses a disposable absorbent pant comprising an outer cover with an interior surface and an opposite exterior surface, an absorbent material disposed on the interior surface of the cover (figure 7A), said pant further having front and back regions which define a waist region, a crotch region extending between the front and back regions (figure 3), a color gradation on an area of the pant which is visible when the pant is worn, said color gradation providing a coloration which varies from a higher intensity of color in the vicinity of the waist region to a lower intensity of color toward the crotch region (one of fish 78), and a wetness indicator in the crotch region at a location where the coloration is lower intensity or absent such that any indication of wetness by the wetness indicator remains visible and is not obscured by the color gradation as set forth in col. 2, lines 3 – 15; col. 3, lines 24 – 28; col. 7, lines 39 – 43; col. 13, lines 14 – 45 and figure 1.

As to claim 16, Olson discloses an absorbent pant wherein the wetness indicator comprises an active graphic (one of fish 78) as set forth in figure 1.

With reference to claims 17 and 19, Olson discloses a printed color gradation in the area as set forth in figure 1.

As to claims 18 and 21 – 22, Olson discloses a color gradation that appears in the area whether the area is wet or dry as set forth in col. 2, lines 11 – 15.

With respect to claim 20, see col. 2, lines 36 – 49

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday - Friday, 7:30am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.


Michele Kidwell
December 20, 2003


GLENN K. DAWSON
PRIMARY EXAMINER